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Before the  
FEDERAL COMMUNICATIONS COMMISSION  
WASHINGTON, D.C. 20554

FEDERAL COMMUNICATIONS COMMISSION  
OFFICE OF THE SECRETARY

In the Matter of

Billed Party Preference  
For 0+ InterLATA Calls

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CC Docket No. 92-77

COMMENTS OF APCC ON PETITIONS FOR RECONSIDERATION

Pursuant to the Commission's Public Notice, 58 Fed. Reg. 12364 (March 4, 1993), the American Public Communications Council ("APCC") submits the following comments on the petitions for reconsideration of the Commission's Report and Order and Request for Supplemental Comment ("Order") in these proceedings, FCC 92-465, released November 6, 1992. APCC supports the petitions of operator service providers ("OSPs") and their trade association, COMPTel. APCC opposes the petition for reconsideration filed by Southwestern Bell.

APCC agrees with the OSP petitioners that the FCC has erred in failing to require AT&T to choose between treating its CIID calling cards as truly universal, i.e., as a card which can be used with the services of all carriers on a nondiscriminatory basis, and truly proprietary, i.e., as a card which can be used only for the services of AT&T. APCC believes that the reasoning of the petitioners is compelling and will not restate all petitioners' arguments here. APCC's comments focus on a critical point which the Commission's order disregarded and which, standing alone, compels reconsideration of the Commission's decision.

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As MCI explains, the Commission's Order inappropriately failed to consider evidence that AT&T "engages in anticompetitive and unreasonably discriminatory practices by allowing LECs to validate its CIID card, but not other carriers." Petition of MCI at 3. The Commission dismissed this issue in a single sentence, stating only that "APCC's proposal is beyond the scope of the issues in this proceeding because it focuses on the question of LEC/OSP competition for 0+ interLATA traffic." Order, para. 63. Failing to address the issue of discriminatory LEC practices was an error and must be reconsidered.

AT&T's discriminatory validation practices are directly relevant because, as LDDS explains, they demonstrate that AT&T's so-called "proprietary" CIID cards "are not truly proprietary." Petition of LDDS Communications, Inc. ("LDDS") at 5-6. This point is so important and was so completely disregarded in the Commission's Order that it deserves to be restated at length. In LDDS's words:

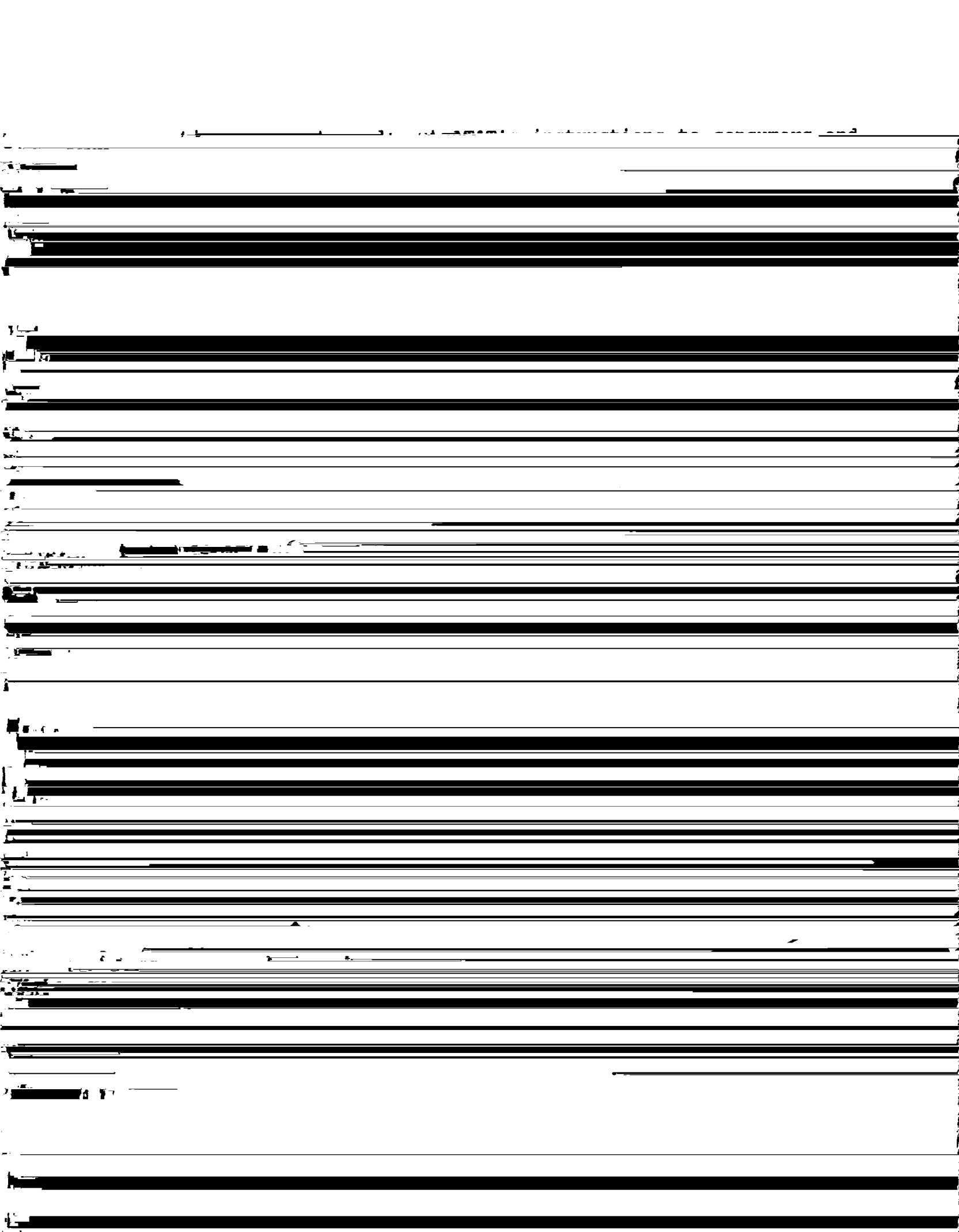
LDDS has no quarrel with the Commission's view that proprietary calling cards create public interest benefits, including consumer choice. Indeed, LDDS issues proprietary calling cards to its customers. Unlike LDDS's cards, AT&T's CIID cards are not truly proprietary cards. Those cards are not limited to the services of the card-issuing carrier. Rather, as the Commission has noted, AT&T permits many carriers -- local exchange carriers as well as selected other IXCs -- to accept those cards and to access its CIID card data base. In fact, AT&T's so-called "proprietary" calling card may be

calls dialed on a 0+ basis rather than a 10XXX+0 basis) while limiting access to the validation data base to itself and favored IXCs for other calls (e.g., interLATA calls except for those carried by companies like GTE Airfone and Alascom), these so-called "proprietary" calling cards are effectively dividing the long distance operator-assisted calling market between AT&T and its former LEC partners in much the same manner as it was prior to divestiture. In addition, AT&T now permits Stentor, a Canadian IXC, to validate calls charged to AT&T CIID cards.

Id.

The Commission rationalizes its complete disregard of this issue, which goes to the heart of the CIID card problem, on the grounds that "it focuses on the question of LEC/OSP competition for 0+ intraLATA traffic" and is therefore "beyond the scope of the issues in this proceeding." Order, para. 63. This rationalization is not supported by the record. AT&T's CIID card validation practices certainly do affect intraLATA competition. However, they also have a direct impact on interLATA competition and are directly relevant to the consumer and competitive issues the Commission purported to address in the Order.

The comments of APCC showed clearly that AT&T's discriminatory card validation practices, and the resulting consumer frustration, are intimately linked to the problems on which the Commission requested comment in these proceedings. The same CIID cards are used by consumers for inter- and intraLATA calling. Cardholders cannot be expected to, and generally do not, carry around in their minds clearcut distinctions between intraLATA and interLATA traffic. Thus, the effect of AT&T's discriminatory validation practices is not limited to intraLATA calling. Rather, those



0+, and the consumer education measures will fail of their intended effect.<sup>2</sup>

Yet another reason why AT&T's discriminatory card validation practices are directly relevant is that the Commission's failure to address them prevented it from crafting a remedy which would have been effective in addressing the competitive problem. The Commission rejected the "0+ public domain" remedy proposed by various OSPs because it perceived the remedy as presenting AT&T and its cardholders with unacceptable alternatives. Under "0+ public domain" as framed by the Commission, AT&T and its cardholders could choose between (1) having a truly proprietary card that involved dialing an access code, and (2) having a card that could be validated on a 0+ basis by any carrier. The Commission found that it should not require AT&T to adopt the second alternative. Order, paras. 47-48. Therefore, the Commission concluded that "a key

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<sup>2</sup>Southwestern Bell recognizes the inconsistency between AT&T's validation practices and the consumer education measures. However, Southwestern Bell proposes to resolve this inconsistency by altering the consumer education measures so that consumers are actually instructed that they can use their cards on a 0+ basis with the services of LECs. Petition of Southwestern Bell at 1-4. This solution, of course, would legitimize AT&T's blatantly discriminatory card validation practices. In addition, it would perpetuate and aggravate the very problem that the FCC purports to address: the dialing of 0+ by cardholders without first ascertaining whether AT&T is the presubscribed carrier for the line, and the resulting customer frustration and loss of customer good will for the OSP. Order, para. 25. Cardholders cannot be expected to distinguish clearly between LECs carrying intraLATA calls and IXC's carrying interLATA calls. By lengthening the list

the competitive problem that the Commission's Order acknowledges to require relief.<sup>1</sup>

The Commission recognized that AT&T's CIID card practices create an "immediate competitive problem" by generating consumer confusion and frustration and loss of customer good will for OSPs. Order, para. 25. However, the Commission's failure to address the discriminatory card validation issue fatally undermines the consumer education measures which the Commission imposed on AT&T as a remedy for the competitive problem. The Commission's consumer education measures require AT&T to reeducate its cardholders to check the presubscribed carrier to make sure it is AT&T, before dialing 0+. By failing to address AT&T's discriminatory practice of validating its cards for any LEC, the FCC ensures that its consumer education measures will be undermined: through experience, callers will discover that they can reach other carriers by dialing

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<sup>1</sup> Another effect of the Commission's failure to address AT&T's discriminatory validation practices is to eviscerate the Commission's previous rulings requiring LECs to cease their discriminatory policy of allowing validation of LEC-issued cards only by AT&T. Policies and Rules Concerning Local Exchange Carrier Validation and Billing Information for Joint Use Calling Cards, 7 FCC Rcd 3528 (1991). Under the Order, what the LECs cannot accomplish with the cards they issue can be accomplished by means of cards issued by AT&T: the recreation of a dominant-carriers-only card which can be validated for calls carried by the LECs and AT&T, but not for calls carried by non-dominant carriers.

issue" must be resolved: whether or not it would be feasible for AT&T and its cardholders to have truly proprietary cards based on the dialing of access codes. The Commission answered this question in the negative because it believed there was no feasible method, in the near term, for AT&T to distinguish 0+ from 10XXX calls. Order, para. 33. Therefore, the Commission found that AT&T could not physically prevent its callers from completing 0+ calls on AT&T's network. Id. The Commission concluded that, in the absence of a means of preventing callers from completing 0+ calls on AT&T's network, merely instructing callers not to dial 0+ would not have the intended effect and would not solve the problem the Commission

not tell AT&T what to do about intraLATA calls. It would only make the validation requirement applicable to interstate calls dependent on whether AT&T chose to validate its card for any LEC on intraLATA calls. See Comments of APCC at 15, n. 11, citing Conway v. Federal Power Commission, 510 F.2d 1264 (D.C. Cir. 1975), aff'd 426 U.S. 271 (1976).

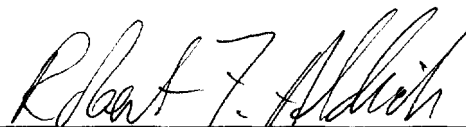
This remedy would be effective in solving the "immediate competitive problem" of consumer frustration and loss of customer good will which the Commission sought to address in the Order. The true proprietary alternative of denying validation to LECs would eliminate the key circumstance which currently leads consumers to think that they can dial 0+ regardless of who is identified as the carrier by the signs or brands on phones. Instead of relying on consumer education which is inconsistent with AT&T's actual practice, the FCC would ensure that AT&T enforced its consumer instructions by denying validation to any other carrier. This would effectively prevent consumers from dialing 0+ without checking the carrier's identity, because such dialing behavior would not work often enough to be reinforced. In short, by taking account of AT&T's discriminatory validation practices, the FCC could craft a "0+ public domain" remedy which offers AT&T a clearly feasible "proprietary" alternative for those customers who desire a genuinely proprietary card.



CONCLUSION

For the foregoing reason, the Commission's Order failed to address a critical issue of direct relevance to the problem the Order sought to resolve. Therefore, the OSPs' petitions for reconsideration must be GRANTED.

Respectfully submitted,



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CERTIFICATE OF SERVICE

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